

Filed in Douglas District Court

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IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

GARY MADSEN,

Plaintiff,

v.

ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY,

Defendant.

Case No. CI 21-_____

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

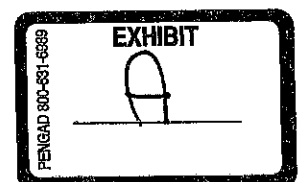
COMES NOW the Plaintiff, Gary Madsen ("Plaintiff"), and for his Complaint against the Defendant, Allstate Vehicle and Property Insurance Company ("Defendant"), states and alleges as follows:

PARTIES

1. Plaintiff was, at all times relevant, a resident of Omaha, Douglas County, Nebraska, and resided at 16514 L Street in Omaha, Douglas County, Nebraska.
2. Defendant is an Illinois company and, at all times relevant, was conducting business and selling policies of insurance in Omaha, Douglas County, Nebraska.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to Neb. Rev. Stat. §§ 24-302 and 25-536 as Defendant transacts business within the State of Nebraska and, at all times relevant, has contracted to insure the Plaintiff.
4. Venue is proper in this Court pursuant to Neb. Rev. Stat. §§ 25-403.01 and 25-403.02 as Defendant transacted business in Douglas County, Nebraska and the cause of action arose out of Douglas County, Nebraska.



FACTUAL BACKGROUND

5. At all times relevant, Plaintiff was the owner of the real property and resided at 16514 L Street in Omaha, Douglas County, Nebraska (the "Property").

6. While residing at the Property, Plaintiff maintained a homeowner's insurance policy with Defendant, Policy No. 815 145 518 (the "Policy"), which provided coverage for various perils, including damage to the Property caused by hail, rain, and wind.

7. The Policy was in force and in effect on or around May 28, 2019.

8. Plaintiff was the named insured on the Policy.

9. The Policy provides coverage for hail, rain, and wind damage to the Property.

10. On or around May 28, 2019, Plaintiff's Property sustained severe and extensive damage as a result of a wind, rain, and hail storm (the "Storm").

11. The damage to Plaintiff's Property as a result of the Storm includes, but is not limited to, damage to the roof on the Property, damage to the Property's siding, gutters, garage, Andersen windows, brick siding, and damage to various other portions of Plaintiff's Property (generally referred to as the "Damage"). The Damage has necessitated Plaintiff obtain a full roof replacement, a full replacement of the Andersen windows and replacement of other damaged locations on the Property as a result of the Storm.

12. Plaintiff made timely demand for coverage from Defendant by filing a claim for the fair and reasonable value of the cost of replacing the Damage to the Property.

13. Defendant assigned claim number 0547009753 to Plaintiff's claim for damages (the "Claim").

14. Defendant agreed that certain damage to the Property occurred as a result of the Storm. However, Defendant refuses to tender the full amount of the fair and reasonable cost to replace the Damage. Defendant wrongfully and without a reasonable basis failed and/or refused to acknowledge the extent and severity of the Damage to Plaintiff's Property. As such, Plaintiff has been unable to make all necessary replacements and repairs to the Property.

15. To date, Defendant has only tendered coverage payment of \$23,102.11, which is significantly less than the total estimate of damages sustained to the Property.

16. Notwithstanding timely demand made by Plaintiff upon Defendant to pay the entire fair and reasonable cost of replacing the Damage on Plaintiff's Property, Defendant has failed and refused to pay such amount to fix the Damage to the Property.

17. Defendant's failure and delay in paying the fair and reasonable value of replacing the Damage has caused additional damages to Plaintiff's Property, including, but not limited to, water intrusion into the Property causing interior damage.

**FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

18. Plaintiff, for his first cause of action, fully incorporates the foregoing Paragraphs 1 through 17 above as if fully set forth herein.

19. Plaintiff has a contract for insurance with Defendant, the terms of which require Defendant to pay for the Damages to Plaintiff's Property as a result of the Storm.

20. The Policy provides coverage for damages resulted from covered losses, which includes damages as a result of hail, rain, and wind storms.

21. Plaintiff has satisfied all conditions precedent under the contract of insurance with Defendant, which includes, but is not limited to, timely payment of all premiums and furnishing Defendant with timely written proof of the loss.

22. Defendant had actual and constructive knowledge that the Damage to the Property is a result of a covered loss, which is evidenced by Defendant's agreement that certain damage to the Property occurred as a result of the Storm.

23. The Damage to Plaintiff's Property is a covered loss under the Policy.

24. Defendant has breached the terms of the contract of insurance by failing to pay for the entire fair and reasonable value to replace the Damage to Plaintiff's Property despite Plaintiff's timely demand for the same.

25. As a direct and proximate result of Defendant's breach, Plaintiff has been damaged in an amount to be proven at trial.

WHEREFORE, Plaintiff Gary Madsen prays that this Court find Defendant breached the contract of insurance with Plaintiff, that Defendant's breach has caused Plaintiff damages in an amount to be determined at trial, and award Plaintiff his damages, pre-judgment and post-judgment interest, his reasonable attorney's fees, costs, and expenses pursuant to Neb. Rev. Stat. § 44-359, and for such other further relief that the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all the issues contained herein so triable.

DATED this 6th day of April, 2021.

GARY MADSEN, Plaintiff,

By: /s/ Gretchen L. McGill
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PRAECIPE FOR SUMMONS

TO THE CLERK OF SAID COURT:

Please issue Summons to be served upon Defendant, Allstate Vehicle and Property Insurance Company, via certified mail, return receipt requested, at the following address:

Allstate Vehicle and Property Insurance Company
3075 Sanders Rd., Ste. G4E
Northbrook, IL 60062-7127

DATED this 6th day of April, 2021.

GARY MADSEN, Plaintiff,

By: /s/ Gretchen L. McGill
Gretchen L. McGill, #21726
Ryan J. Coufal, #26777
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